

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AHARON MILLER, SHANI MILLER, ADIYA
MILLER, PETER STEINHERZ, LAUREL
STEINHERZ, JOSEPH GINZBERG, TEMIMA
STEINHERZ, and JOSEPH COHEN,

Plaintiffs,

-against-

NATIONAL WESTMINSTER BANK, PLC,

Defendant.
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Case No. 19-cv-00001 (DLI)(RML)

STIPULATION AND [PROPOSED ORDER]

WHEREAS, on January 1, 2019, Aharon Miller, Shani Miller, Adiya Miller, Peter Steinherz, Laurel Steinherz, Joseph Ginzberg, Temima Steinherz, and Joseph Cohen (collectively, the “Miller Plaintiffs”), filed this action (“this Action”) and asserted claims in their Complaint (the “Miller Complaint”) against National Westminster Bank, PLC (“Defendant”);

WHEREAS, the claims asserted in the Miller Complaint substantially overlap with those asserted in *Weiss, et al. v. National Westminster Bank, PLC*, Case No. 05-cv-4622 (DLI)(RML) and *Applebaum, et al. v. National Westminster Bank, PLC*, Case No. 07-cv-916 (DLI)(RML) (together, the “Underlying Actions”), in which Defendant has filed a motion for summary judgment, which is currently *sub judice* (the “*Weiss/Applebaum* Summary Judgment Motion”).

NOW, THEREFORE, it is stipulated and agreed as follows:

1. Defendant agrees to waive service of the Summons in this Action and the Miller Complaint. Defendant will execute Waiver of the Service of Summons within a reasonable time after receiving such forms from the Miller Plaintiffs, who will then be responsible for filing them through the CM/ECF filing system;


2. The deadline for Defendant to respond to the Miller Complaint, and all other proceedings in this Action, shall be stayed pending the Court's ruling on the *Weiss/Applebaum* Summary Judgment Motion;
3. Defendant shall be deemed, as of the date of this Stipulation, to have moved for summary judgment in this Action for the reasons set forth in Defendant's pending *Weiss/Applebaum* Summary Judgment Motion, and the record of the Underlying Actions, upon which such motion is based, shall be deemed incorporated into this Action. Neither Defendant nor the Miller Plaintiffs shall file in this Action any additional briefs or letter briefs concerning the subject matter of the *Weiss/Applebaum* Summary Judgment Motion while it is pending, unless the Court otherwise directs. The Court's ruling on the *Weiss/Applebaum* Summary Judgment Motion shall apply to this Action to the extent the Miller Complaint raises the same issues as the Court addresses in its ruling on the *Weiss/Applebaum* Summary Judgment Motion;
4. Following the Court's ruling on the *Weiss/Applebaum* Summary Judgment Motion, the Miller Plaintiffs and Defendant shall meet and confer on a mutually agreeable schedule for further proceedings in this Action, if any;
5. Defendant will not move to dismiss any claims in this Action that are also pleaded in the Underlying Actions and on which judgment has not been granted to Defendant in the Underlying Actions;
6. Plaintiffs will not oppose a motion to dismiss any claims in this Action that are also pleaded in the Underlying Actions and on which judgment has been granted to Defendant in the Underlying Actions;

7. Subject to the foregoing, Defendant's waiver of service of the Summons in this Action and the Miller Complaint and their agreement to the terms of this Stipulation are not and shall not be deemed a waiver of any defenses in or objections to this Action, including to the Court's jurisdiction over Defendant and/or the venue of this Action, all of which are preserved to the same extent that such defenses are preserved in the Underlying Actions; and
8. If this Action ultimately is consolidated with the Underlying Actions prior to a trial on liability in the Underlying Actions, none of the Plaintiffs in this Action will be called to testify at that liability trial.

Dated: New York, New York
March 28, 2019

Respectfully submitted,

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SO ORDERED:

Dated: _____

Honorable Dora L. Irizarry, U.S.D.C.